# Minutes
## WATER POLICY TASK FORCE
## SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

**September 9, 2004**
**10:00 a.m.**
**SCAG Offices: Riverside B Meeting Room**

## 1.0 CALL TO ORDER

Chair Dennis Washburn called the meeting to order at 10:07 a.m.

## 2.0 PUBLIC COMMENT PERIOD

There were no public comments.

## 3.0 APPROVAL OF MINUTES

The minutes of the June 10, 2004 meeting were approved without objection and with one abstention.

## 4.0 PRESENTATION ITEMS FOR THE TASK FORCE

### 4.1 Stormwater Management Update

Bo Cutter, a Task Force member and Professor at UCR (Department of Environmental Sciences), focused his presentation on new directions in stormwater management and program funding. In the area of program funding he noted that state and local resources are in such a difficult position that agencies will need to emphasize the use of small scale source controls in program implementation. He discussed the use of implementation strategies in conjunction with incentives or market-based regulations. These strategies included stormwater fee credits and stormwater subsidy auctions. He noted that Orange County was considering a stormwater utility fee and that it was polling over 50% even when the fee was set at $5 per residential property month. Two legislative approaches were considered but not pursued in the past state legislative session: ACA 10 that would exempt stormwater management fees from a two thirds vote requirement was put on inactive status and AB 204 that would allow local agencies to put a surcharge on auto registration fees for stormwater runoff management activities, subject to voter approval. This local option measure proposed that polluters would pay for pollution controls.

Prof. Cutter then reviewed Proposition 218 case law where property related services are concerned and a majority vote requirement exists. On the topic of more cost-effective runoff control, he discussed regional solutions for different pollutants and the use of BMPs, stressing the importance of source controls as the most effective means for reducing pollutants. He noted that it is important to maximize the efficiency of existing treatment facilities and then look at other pollution control measures such as small-scale source control BMPs as ways to maximize cost-effectiveness. These have been developed successfully by local organizations like TreePeople. These kinds of measures are particularly worthwhile when key pollution control studies and watershed regulations are still developing higher definitions of certainty.

In the area of market based economic incentives Cutter discussed the potential for a market where runoff pollution credits could be traded, based on incentives that are identified by a trading pricing structure. Incentive structures would encourage development of controls that have lower costs. In the case of stormwater utilities, the incentives would come in the form of stormwater fee credits where property owners avoid fees by implementing workable BMPs. In early cases where they have been used, the credit concept has not produced many noteworthy results, indicating a need for both wider usage and higher credits. He then reviewed stormwater pollution subsidy auctions—similar to air pollution auctions--where parties bid for an amount of peak runoff volume, runoff volume or pollution control. With an auction the lowest amount bid would win for a stipulated period of time. These small-scale source control strategies, when used successfully, should minimize the need for new or expanded regional treatment facilities.

### 4.2 Total Maximum Daily Loads (TMDL) for Metals in the Los Angeles River and Ballona Creek

A panel of speakers addressed the proposed Metals TMDL. Representing the Regional Board, **Melinda Becker** gave an overview of the proposed TMDL that addresses only fresh water column toxicity. Sediment toxicities will be addressed in other regulations. The focus has been to put a cap on total loading of metals in these watersheds. The TMDL creates a numeric target from which waste load allocations are determined based on flow volumes and a conservative margin of safety. The Los Angeles River watershed is large and diverse in land uses and rainfall intensities. The TMDL does not address aluminum or selenium. The California Toxics Rule (CTR) set limits for dissolved metals and toxicity in the River.

Further monitoring will be needed in dry and wet weather to determine whether other pollutants are detected and require allocations. Dissolved metals are important because they are the most bioavailable. In general, as water hardness increases toxicity decreases. In the upper LA River watershed before any POTW discharges occur (from the Tillman, Burbank and Glendale treatment plants, principally) water hardness is quite high; below the points where the POTW discharges occur it is much lower. The most definitive load allocations are dry weather based allocations. Other key dischargers include the NPDES permittees: LA County, Long Beach and Caltrans.

Background natural sources of metals and atmospheric deposition were not considered in the TMDL. In general, during dry weather 75% of the current flow owes to the POTW discharges, 25% is allotted to NPDES permittees. In wet weather these percentages are substantially reversed even with the variability of flows. Also, hardness decreases, increasing the TMDL's limitations. The implementation plan would subject the POTWs to the TMDL requirements at the next renewal of discharge permits, notwithstanding their current requirement to comply with the CTR.

**Dan Lafferty**, representing LA County's Department of Public Works, commented on problems in the TMDL process, including the loss of the "safe harbor" provision and uncertainty about support for an iterative use of BMPs to manage pollutants. In contrast to the iterative approach, the TMDL sets numeric limits that determine compliance results. The agency prefers to see the limits defined as a goal and BMPs used incrementally, if needed, to achieve the goal. Specifically, the County is concerned that the application of CTR to stormwater dischargers is inappropriate for "non point" types of pollution, that the TMDL applies to unlisted reaches of the LA River, that the TMDL applies to all metals in all reaches when just one pollutant is identified,

that no allocations were made for "non-point" sources, that the schedule for agency actions following adoption is much too short, that the reopener timing should be accelerated, that the compliance points need to be adjusted and that the TMDL requires excessive monitoring activity that diverts resources from implementation efforts. Certain legal issues are process issues with the TMDL: the CEQA was inadequate, that it creates an unfunded mandate, that the economic analysis was inadequate, that pollution management tools are not sufficiently proven to align with numeric compliance standards. The TMDL should not be written in ways that set agencies up for failure.

**Clayton Yoshida**, representing the City of Los Angeles, indicated that the City considered the draft TMDL to be a good start. Nevertheless, additional studies and data is needed in the following areas: translators, water effects ratios, flow and hardness data. The City appreciates the apparent willingness of the Board staff to consider lengthening the implementation schedule in the next draft of the TMDL. The City is concerned about the limited availability of BMPs that can control metals, creating a need for more BMP research. Another concern is the lack of participation by many of the downstream LA River cities in the TMDL planning process, as well as in the budgeting and approval process. The City would also like the unlisted reaches excluded from the TMDL, notwithstanding the tributary rule. Since many of the metals BMPs are effective with more than one type of metal, use of that BMP may result in improvements with more than one pollutant.

The City is not prepared to agree with a view expressed by Board staff that the Maximum Extent Practicable (MEP) standard is equivalent to the CTR standards, especially with wet weather compliance. As a result, the City would like to have MEP standards clarified for various weather conditions. Like the County, the City would like to see a 22 year timeframe for full compliance with the TMDL. The role and growth of POTWs is important, especially with rules about permitted flows and concentrations. In order to create practical participation and accountability, the City would like to see two jurisdictional groupings on the LA River, defined by locations north and south of the Arroyo Seco. Like the County, the City wants "safe harbor" language in the TMDL stating that use of certain BMPs constitutes compliance and reflects a MEP achievement. Special attention is needed to prevent unintended impacts between margins of safety and the use of assumptions that deviate away from median values (e.g., the translator and the water effects ratio) in the TMDL.

**Bob Wu**, representing Caltrans District #7, indicated that Caltrans properties account for 1.3% of both watersheds. Caltrans prefers a more holistic approach on pollutant control so that solutions can be more comprehensive and cost effective, not piecemeal. Trash TMDL compliance costs alone are expected to exceed $200 million. Some of the beneficial uses are not supported by the existing condition of the certain waterbodies. There's concern that the TMDL's cost analysis does not consider lifecyle and other costs. In response to the metal TMDL Caltrans will install sand filters in the LA River watershed at a cost of about in about 40% of their area at a cost of more than $300 million without considering right of way and other costs. In the Ballona Creek watershed they will use infiltration trenches in 40% of the Caltrans drainage area at a cost of $45 million of basic cost. As for information, Caltrans does not think there is enough low flow data samples to properly model implementation and compliance results. Since POTWs routinely discharge above the proposed levels it would unfairly penalize the stormwater dischargers. Also, since transportation land use is not included in the hydrodynamic water quality model Caltrans doesn't see a credible process for giving transportation uses a waste load allocation. There is a need to allow for site-specific evaluations for water effects ratios. The TMDL's assumption of a ratio of 1.0 is not realistic. There is skepticism about the economic analysis that shows no need

for structural BMPs in order to get compliance in 60% of the watersheds, as well as about the use of infiltration in 20% of the Ballona Creek watershed.

**Rodney Andersen**, representing the City of Burbank, emphasized that there should not be a TMDL in reaches without actual impairments and that implementation schedules need to be realistic. Some listings with zinc and cadmium are questionable because they are based on very few samples out of the total samples taken. Without delisting adjustments the permittees would face very large monitoring costs to prove compliance with pollutants that are largely missing. An interesting unintended consequence of nitrate and ammonia removal instituted by Burbank to comply with the nutrient TMDL is now the higher incidence of copper in their discharges. This outcome creates concerns about infiltration BMPs and other strategies raised in the metals TMDL. The way the TMDL is written in current draft form Burbank would be immediately out of compliance. As for the implementation schedule, deadlines are unrealistic for reverse osmosis and other advanced treatment requirements. Without a change in the schedule continuing with costly studies like the current water effects study would be pointless. Full economic analysis is essential. Interim limits are also needed while further improvements in the pollution control policy are developed.

**Richard Watson**, representing cities in the Coalition for Practical Regulation (CPR), pointed out that they had provided the Board with about 2500 pages of comments on the TMDL. Key concerns include improper waste load allocations, absence of load allocations, BMP sizing, and CEQA and legal issues. CPR is also concerned about pollutants identified in unlisted waterbody segments. There is also concern about atmospheric deposition of metals and disagreement in the approach taken by the Board that recognizes only direct deposition on waterbodies; a load allocation needs to be given to "non point" sources as well, including in direct deposition on national forest lands and other open space. Resolving this indirect deposition issue requires the use of new source controls, bringing air and water regulators into a joint framework. Otherwise, there can be no expectation that water quality standards for metals can be met. Since currently proven BMPs have limited capabilities with high flow storm events, CPR would like to see a high flow exemption in the TMDL until new BMP technologies are developed for cost-effective use.

Chair Washburn proposed that the Task Force take action with passage of a motion recommending to the Energy and Environment Committee and the Regional Council that *the Executive Director be authorized to offer SCAG's assistance to the Los Angeles Regional Water Quality Control Board for development of an intergovernmental framework through which comprehensive and coordinated Total Maximum Daily Load (TMDL) implementation planning can be done for water quality compliance in the Los Angeles River watershed*. The action was moved and seconded and adopted without any objection from Task Force members.

### 4.3 TMDL Planning in Calleguas Creek Watershed: Controlling Metals Pollution

**Don Kendall**, General Manager of Calleguas Municipal Water District, briefed the Task Force on a collaborative TMDL planning process underway in the Calleguas Creek Watershed based on a work plan with the Regional Board. Information can be found on their website: www.calleguas.com. The Calleguas as brought together the different parties involved in water issues, including water supply and wastewater dischargers. One element of concern all around is protection of local water supplies through proactive water quality planning, such as TMDLs, including efforts to reduce contamination by metals like selenium that appear naturally in the Calleguas watershed. Other metals may rise in importance, including copper that comes as a

byproduct in treated imported water from the northern California Delta. The uniqueness of the Calleguas effort is the comprehensive approach to plan pollution control within one framework and with credible monitoring and scientific evaluations.

## 5.0 CHAIR'S REPORT

There was no report.

## 6.0 STAFF REPORT

There was no report.

## 7.0 TASK FORCE INFORMATION SHARING

The Chair announced a program on "Financing our Future" in Thousand Oaks at the Civic Arts Plaza on September 30.

## 8.0 COMMENT PERIOD

There were no comments from Task Force members.

## 10.0 ADJOURNMENT

Chair Washburn adjourned the meeting at 12:25 p.m.

ATTENDANCE SUMMARY:

Elected Members: Dennis Washburn (Chair), Harry Baldwin, Larry Forester, Keith McCarthy, Sheena Moqeet.

Liaison Members: Bo Cutter, Gerald Greene, Don Kendall, Dan Lafferty, Heather Merenda, Mike Schulz.

Minutes prepared and approved by Daniel E. Griset, Sr. Regional Planner and Staff to the Task Force